IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8810 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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Versus

BHARUCH MUNICIPALITY

Appearance:

MR SUNIL K SHAH for MR DT SONI for Petitioners No. 1-5

MS POURMI SHETH for MR BR SHAH for Respondent No. 1

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 29/11/2001

ORAL JUDGEMENT

1. The petitioners were appointed as Clerks on daily

wage basis by respondent-Municipality since 1980 (petitioner No.1), 1983 (petitioner No.2) and 1984 (petitioner Nos.3, 4 and 5). The grievance made in the petition is to the effect that the respondent-Municipality be directed to treat the petitioners as Clerks in regular time scale of pay without any break on or after 1st August, 1987.

2. Ms.Paurmi Sheth, learned advocate for the respondent No.1 has placed on record the order dated 6th April, 1993 (for petitioner Nos.1 and 2), 31st March, 1994 (petitioner No.3), 12th January, 1995 (petitioner No.4) and 11th June, 1996 (petitioner No.5) where under the petitioners have been absorbed and their services were regularized in the regular time scale of 950-1500 as Clerk with the respondent-Minicipality. Based on this order, Ms.Sheth submitted that so far as the petitioners are concerned, now no grievance survives and the petition, therefore, should be rejected.

3. As against this, Mr.Sunil K. Shah, learned advocate for the petitioners submitted that the petitioners have been regularly working with the respondent-Municipality as Octroi Clerks since the date of the appointment and in July, 1987, the respondent-Municipality had given them regular time scale, but for the reasons best known to respondent-Municipality, the petitioners were again reverted as daily wagers. It is submitted that the respondent-Municipality be directed to grant the same pay scale which is being paid to other clerks of the respondent-Municipality, who are discharging duties of similar nature. Mr.Shah has placed reliance upon various Supreme Court decisions that an employer cannot discriminate between employees, who are involved in the same type of work and such employees are entitled to equal pay for equal work.

4. Ms.Sheth submitted, by placing reliance upon the reply affidavit, wherein it is stated that the petitioners are not involved in carrying out the work of similar nature as other persons in the same department, that the petitioners cannot claim such equality. This contention shall have to be rejected in light of the order of the Division Bench rendered on 1st May, 1991 in L.P.A. No.348 of 1990.

5. It appears that, when the matter was admitted on 29th March, 1990, no interim relief was granted and the said order was challenged in L.P.A.No.348 of 1990, the

same was disposed of on 1st May, 1991 by the Bench consisting of their Lordships Mr.G.N.Ray, C.J. and Mr.R.K.Abhichandani,J. In the said order, the respondent-Municipality was directed to pay the minimum time scale to the clerks of the Municipality with effect from May, 1991.

6. In light of the submissions made by both the sides as well as the settled legal position and the order made by the Division Bench of this Court in L.P.A.No.348 of 1990 as rendered on 1st May, 1991, the respondent-Municipality is directed to treat the petitioners as Clerks in regular time scale without any break on or after 1st August, 1987. The respondent-Municipality shall undertake and complete this exercise within a period of 8 weeks from the date of receipt of certified copy of this judgment or writ of this Court, whichever is earlier. In so far as the other reliefs mentioned in para-12 are concerned the same are not required to be granted in light of the fact that the services of the petitioners have been regularized only from the dates as mentioned hereinbefore. The petition is allowed accordingly to the aforesaid extent. Rule is made absolute in the aforesaid terms. There shall be no order as to costs. Direct service is permitted.

(D.A.Mehta,J.)

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